Supreme Court, U.S.

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No._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

In the Matter of Benjamin Sneed,
an Attorney and Counselor-at-Law:

Benjamin Sneed, Esquire,

Petitioner,

- against -

Departmental Disciplinary Committee
for the First Judicial Department,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF
THE STATE OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I

Whether it is a breech of due process to allow a chairman of a disciplinary committee hearing to sit in judgment when; he has had prior dealings with the appellant as an adversary in an acrimonious litigation, did not immediately disclose these dealing, and then did not allow for a complete panel to hear the case at bar.

PARTIES

The caption lists all of the parties in the United States Court of Appeals for the Second Circuit. No party is a corporation under rule 28.1

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JURISDICTION

The Appellant has appealed to this Court as a matter of right, pursuant to the provisions of CPLR 5601 (b). sibd. "1" and "2", respectively from an order unanimously made and entered in the Appellate Division of the Supreme Court of the State of New York, Appellate Division, First Department, on the 13th day of July 1993, and duly entered in the offices of the said Court on the 13th day of July, 1993, which said order unanimously affirmed the findings of a hearing panel and ordered that the appellant be suspended from the practice of law, for a period of five (5) years, effective the 12th of August, 1993, (30 days from the date of the entry of the said order). Annexed hereto, as one exhibit, to wit: Exhibit 1, is a copy of the said order of suspension (Exhibit l-A); a copy of the decision

of the said Appellate Division (Exhibit I-B). The Notice of Entry of the said order, bears the legend, Exhibit 1.

Jurisdiction of this Court is invoked then, pursuant to 28 U.S.C. Sec. 1257 (a). The petition for writ of certiorari has been filed within ninety (90) days of the final judgment of the court of appeals, State of New York.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States, which provides in part:

> [N]or shall any State deprive any person of life, liberty, or property without due process of law...

STATEMENT OF THE CASE

Prior to the hearing, a motion was made to the Appellate Division of The State of New York, First Department requesting that each member of the panel give a short synopsis of this type of practice and state whether he or she knew the respondent Benjamin Sneed and whether he or she knew the respondent or had any legal matters, including all litigation with the respondent or the respondent's firm.

After the hearing was commenced, the respondent's lawyer discovered that the chairman of the panel had had an acrimonious lawsuit with the respondent entitled:

AFRO-AMERICAN SERVICES, INC.,

Plaintiff,

-against-

ALLAN ESRINE, GIDEON CHERN, BAER AMERICAN BANKING CORPORATION, RONALD PAIR, PISO EXPORTS INC., AND LES MATTHEWS

Defendants.

The lawsuit involved an unauthorized taking of $190,000.00 commission out of a letter of credit that the respondent's client, Afro-American Services, Inc. had, in the sum of $6,900,000.00.

The chairman, John R. Horan, whose law firm, FOX, GLYNN & MELAMED, located at One Broadway, New York, New York, was the attorney for BAER AMERICAN BANKING CORPORATION in that action. For reasons unknown to the respondent, but discovered during the hearing that Baer American Banking Corporation was incorporated in London, England with the counseling of Fox, Glynn & Melamed.

When apprised of this acrimonious litigation, the chairman stated that he did not remember the case, nor the respondent until he was presented with the legal brief that he himself had personally written in that case. The chairman's contention is one that belies credibility in view of the fact that the Appellant is a black man and the letter in question was for the sum of $6,900,000.00 issued on behalf of the government of Nigeria.

Moreover, the $190,000.00 that was illegally and unlawfully taken as a commission out of the letter of credit for $6,900,000.00 was placed in Baer American Banking Corporation, the bank that was incorporated in London, England.

Upon on being asked to recuse himself, the chairman went into executive session with the other panel members, but excluded the respondent and the respondents attorney, Herbert Harris.

John R. Horan's act of continuing to sit as Chairman after having an acrimonious lawsuit with the respondent, Benjamin Sneed, and having lied at the outset of this action disqualifies him from acting as a member of this panel, and certainly as Chairman. His natural instincts and attitudes developed out of this acrimonious lawsuit, tainted his thinking toward the respondent and certainly as Chairman, tainted the decision of the other members of the panel, except one.

Further, The panel was to consist of five persons, to wit: the Chairman and four (4) others. In the matter at bar one of the five

was a black female; however, she never attended a hearing with respect to the charges against Appellant. The Chairman explained, at the first sitting of the panel, that the woman in question would not be able to attend the hearing, but she would be provided with a transcript of the sessions, for her use in making her decision. Though she never attended a single hearing, the Chair elected to remove her from panel only at the end of the hearings. She, therefore, had no input into the decision making. Furthermore, upon later information and relief, discovered that she had no knowledge that she had ever been designated a panel member. Nor did she ever receive any transcripts of the hearings. Therefore the Chairman's dismissal of the lone black member from the panel without the consent of respondent's attorney, Hurbert Harris was prejudicial and denied the Appellant the due process of being heard by a complete panel as well as the opportunity to contest that situation. (*See, Matter of Annomachi*, 90 NYS 2d 33)

Further, he permitted one of the persons, who complained of the respondent to testify in either Yiddish or Hebrew, without giving advance notice to the respondent's attorney so that an interpreter could be present. This despite respondent attorney's strenuous objections.

During the hearing's in 1992 Appellant was informed by one of his clients that she had gone to the Disciplinary Committee to make a claim against the Appellant and was informed by a person representing the Respondent that he could not accept the complaint, because the Appellant was being "disbarred". When this situation was brought to the attention of the Disciplinary Committee they responded in writing that no one in the Committee's employment would do such a thing. Several weeks later, when Appellant and two of his employees were at the Clerks Office at the Appellant Division First Department, regarding an Order to Show Cause to reopen the record in the disciplinary proceeding, the Clerk called for someone from Chief Counsel's Office to come down to discuss the Order to Show Cause. An attorney came down and in the course of the discussion stated in an arrogant and sarcastic manner, words to the effect that the discussion did not matter because the Appellant is

being "disbarred" anyway. This is clearly a violation of the Canons of Ethics and the Disciplinary Rules of the Grievance Committee of the State of New York, with respect to the confidentiality of a disciplinary proceeding, prior to a decision and order, thereon.

All of the forgoing is not only been highly prejudicial to the Appellant but reflected the general attitude of the "impartial panel" towards the Appellant. Clearly the said acts alone, raise serious constitutional questions as to due process which must be determined by this Court in the Appellant's appeal.

Consequently, by the order appealed from herein the Appellant is suspended from the practice of law for a period of five years, effective the 12th day of August, 1993.

All of the acts stated deprived the respondent of the due process that he is entitled to under the Fourteenth Amendment of the Constitution, as well as depriving the respondent from making a living at his chosen profession. Therefore for the foregoing reasons, including the fact that one of the panel members made a clear and convincing argument as to what the outcome of this case should have been, as well as in the interest of justice the Appellant prays for the granting of the relief sought- and in particular the TRO, pending the hearing and determination of this motion.

WITH RESPECT TO THE BASIS FOR THIS APPLICATION FOR A WRIT OF CERTIORARI

The basis for the petitioner's having applied to the Court of Appeals of the State of New York is that the petitioner, by the provisions of Article 6, Section 3(b)(1) and (6) to the Constitution of the State of New York adapted which authorizes an attorney in the State of New York to appeal from a disciplinary proceeding.

Prior to the enactment of the said constitutional amendment, the attorney had no appeal. as a matter of right to any court in the State of New York or elsewhere.

The said constitutional provision- contrary to the decision of the New York State Court of Appeals, dismissing the petitioner's appeal to that court, on the grounds that the appeal submitted no substantial constitutional question to be considered by that court.

Appellant respectfully submits that the aforesaid "substantial constitutional question" is not stated in the constitutional amendment as being either a prerequisite or a condition precedent to the exercise of the right to appeal, created by the said constitutional amendment.

Based upon the foregoing, petitioner respectfully submits that the decision of the New York State Court of Appeals to dismiss petitioner's appeal on the grounds above stated is an improvident and erroneous interpretation of the said constitutional amendment and a deprivation of the petitioner's right to an appeal as a matter of right, directly to that court by an adverse decision of the Appellate Division whether unanimous or non-unanimous. As such, the action taken by the Court of Appeals constitutes a deprivation by that court of the petitioner's right under the United States Constitution, as well as the New York State Constitution, to equal protection of the law.

Maxine Thompson had been my secretary for about eight or nine years. In the hearing related to my proceedings, she was call to give a deposition. After the deposition was taken, she stated to me and my nephew, Herbert Harris, who was my attorney in the proceedings that she was repeatedly asked over and over again to the point of intimation and harassment, "whether she was having an affair with my nephew who was my lawyer and she through this was improper and asked over and over for the purposed of intimating her.

At the formal hearing we asked that the deposition be produced. Mr. Maltz the attorney for the association said the depositions were found and produced.

We believe that the deposition and its constituted harassment and intimation of the witness; and may contained exculpatory material.

The chairman insisted that deposition was not necessary to our defense.

CONCLUSION

For the foregoing reasons, this petition for certiorari should be granted.

Dated: New York, New York
December 13, 1993

BENJAMIN SNEED
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APPENDICES

APPENDIX A

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on July 13, 1993.

Present Hon. Francis T. Murphy, *Presiding Justice*
John Carro
Ernst H. Rosenberger
Bentley Kassal
Israel Rubin, *Justices*

In the Matter of Benjamin Sneed, an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

Benjamin Sneed, Esq.,

Respondent.

The Departmental Disciplinary Committee for the First Judicial Department, by Hal R. Lieberman, its attorney (Richard M. Maltz, of counsel), having presented a petition to this Court on February 3, 1993, seeking an order pursuant to 22 NYCRR §603.4(d) confirming the Hearing Panel's Report and Recommendation (one member dissenting), that Benjamin Sneed, Esq. (who was admitted to practice as an attorney and counselor-at-law in the State of New

York, at a Term of the Appellate Division, First Judicial Department, on March 31, 1952), be suspended for a period of five (5) years based upon the Hearing Panel's Report and Recommendation,

And respondent, Benjamin Sneed, having appeared herein by Pope Billups & Sneed, his attorneys (Herbert Harris, of counsel), and having interposed a cross-motion seeking dismissal of said petition,

Now upon reading and filing the papers with respect to the petition and cross-motion, and due deliberation having been had thereon, and upon the Opinion Per Curiam filed herein, and this Court having found and determined, *inter alia:* that given the absence of venality on the part of respondent, and under all of the circumstances and further based upon respondent's prior disciplinary record, a five-year suspension should be imposed as the appropriate sanction for the misconduct at issue; and that respondent's papers in support of his cross-motion are without merit, and it is therefore, unanimously

Ordered, that the petition to confirm the Panel Report is granted insofar as to suspend respondent from practice as an attorney and counselor-at-law in the State of New York for a period of five years, effective August 12, 1993, and until the further order of this Court, and the cross-motion by respondent to dismiss the petition is denied, and it is further unanimously

Ordered that said respondent be and hereby is commanded to refrain and desist from the practice of law in any form, either as principal or agent, clerk or employee of another, and is forbidden to appear as an attorney and counselor-at-law before any court, judge, justice, board, commission or other public authority, and is forbidden to give to another an opinion as to the law or its application, or any advice in relation thereto, effective August 12, 1993, until the further order of this Court. Respondent is directed to comply with Title 22, Section 603.13 of the Rules of the Appellate Division of the Supreme Court, First Department, a copy of which is annexed hereto and made a part hereof.

ENTER:

/s/Catherine O'Hagan Wolfe
CATHERINE O'HAGAN WOLFE
DEPUTY CLERK

/STAMP/

APPELLATE DIVISION SUPREME COURT
FIRST DEPARTMENT STATE OF NEW YORK

I, FRANCIS X. GLADI, Clerk of the Appellate Division of the Supreme Court, First Judicial Department, do hereby certify that I have compared this copy with the original thereof filed in the said court on 7-13-93 and that the same is a correct transcript thereof, and of the whole of said original
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court on JULY 13th, 1993

/s/Francis X. Gladi
FRANCIS X. GLADI
CLERK

APPENDIX B

STATE OF NEW YORK

Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fourteenth day of September, 1993

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 1043 SSD 65 In the Matter of Benjamin Sneed, an Attorney and Counselor-at-Law.
Departmental Disciplinary Committee for the First Judicial Department,

Respondent,

Benjamin Sneed, Esq.

Appellant.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (CPLR 5601). Judge Smith took no part.

/s/Stuart M. Cohen
Stuart M. Cohen Deputy
Clerk of the Court

APPENDIX C

STATE OF NEW YORK

Court of Appeals

CORRECTED ORDER 9/14/93

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of September 1993

Present , HON JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 843
In the Matter of Benjamin Sneed, Esq.,

Appellant.

A motion having heretofore been made herein upon the part of the appellant to vacate this Court's June 14, 1993 order of dismissal, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Judges Smith and Levine took no part.

/s/Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court